

## **ARTICLE V. GENERAL PROVISIONS**

### **Section 5.01. Title of charter.**

This charter shall be known and may be cited as "The Shelby County Charter."

### **Section 5.02. Liberal construction of charter.**

The failure to mention a particular power or to enumerate similar powers in this charter shall not be construed to exclude such powers or to restrict the authority that the county would have if the particular power were not mentioned or the similar powers not enumerated. The charter shall be liberally construed to the end that, within the limits imposed by the charter and by the Constitution and the laws of the state, the county shall have all powers necessary and convenient for the conduct of its affairs, including all powers that counties may assume under the Constitution and laws of the state concerning county home rule.

### **Section 5.03. Definitions.**

The following definitions shall be applicable:

A. The word "ordinance" when used in connection with any action taken by the board of county commissioners shall mean any local legislation adopted by that body which is adopted according to the formalities as set forth in this charter and is of countywide concern in a permanent nature in its effect, whether in a governmental or proprietary nature, including, but not limited to, all types of former actions ratified by the board of county commissioners in the nature of private acts.

B. The word "resolution" shall mean any measure adopted by the board of county commissioners which is not an ordinance, requiring a majority vote for passage unless otherwise required by law for the issuance of bonds, notes or other evidence of indebtedness of the county and dealing in matters of a temporary or special nature, generally involving administrative matters.

C. The word "shall" shall be construed as mandatory and the word "may" shall be construed as permissive.

D. The word "person" shall include the words, "individual," "corporation," "partnership" and "association," unless such a construction would be unreasonable.

E. The phrase "two-thirds of the members of the commission" shall mean at least two-thirds of all members and, in the case of an 11-member commission, shall mean eight members.

#### **Section 5.04. Construction of words in charter.**

For the purpose of this charter, all masculine pronouns used herein shall also mean the feminine of said pronouns; the singular shall also include the plural, and the word "person" shall mean both male and female, plural and singular, partnerships, firms, associations and corporations.

#### **Section 5.05. Amendments to the charter.**

The charter may be amended as follows:

A. In the manner provided by law for the framing, proposal and submission of new charters, a charter commission may frame and propose amendments to this charter and shall submit any such amendment to the voters of the county.

B. The board of county commissioners may frame and by a two-thirds vote of the board of county commissioners propose amendments to this charter. Except as otherwise provided in this subsection, every ordinance proposing a charter amendment shall be introduced in the form and manner, and governed by the procedure and requirements, prescribed for ordinances generally. Every such ordinance shall contain after the enacting clause the following, and no other matter: (1) A statement that the charter amendment set out in the ordinance is proposed for submission to the voters of the county in accordance with the requirements of this charter, and (2) the full text of the proposed charter amendment. Such an ordinance shall become effective upon adoption; and its effect shall be to require that the clerk of the board of county commissioners immediately deliver a certified copy of the ordinance to the county election commission and that the election commission submit the proposed charter amendment therein contained to the voters of the county as provided below.

C. Voters of the county may frame and proposed amendments to this charter. They may propose any such amendment by a petition addressed to the board of county commissioners and containing the full text of the proposed amendment. Any petition proposing a charter amendment must be filed with the clerk of the board of county commissioners and must be signed by qualified voters of the county equal in number to at least 15 percent of the persons who voted in the last gubernatorial election in Shelby County. The clerk shall immediately deliver it to the county election commission. When such petitions have been determined sufficient, the county election commission shall submit same to the voters of the county in accordance with this section.

**Editor's note:** The Charter, § 5.05C., which states "at least 15 percent of the persons who voted in the last gubernatorial election" is superseded by the state law, T.C.A. § 2-5-151(d) which states "at least fifteen percent (15%) of those registered to vote in the ...county."

D. The county election commission shall submit to the voters of the county any charter amendment proposed and delivered to them in accordance with the provisions of this section. They shall submit any such amendment to the voters at the next regular county election if one occurs not less than 60 and not more than 120 days following the delivery to such authorities of the ordinance or petition proposing the amendment. Not less than three weeks before any election at which a proposed charter amendment is to be voted on, the election authorities shall publish a notice in a daily newspaper of general circulation. The form of the ballot for submission of proposed charter amendments shall be governed by state law concerning referendum elections. If a majority of the voters of the county voting upon a proposed charter amendment votes in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters of the county. Any charter amendment shall be published promptly after its adoption in the manner provided in this charter for adopted ordinances.

**Editor's note:** The Charter, § 5.05D, which states "at the next county election if one occurs not less than 60 and not more than 120 days" is superseded by the state law, T.C.A. § 2-5-151(f)(2) which states "a petition for recall, referendum or initiative shall be filed at least sixty (60) days before a general municipal or county election may be held on the question contained in such petition. The question contained in a petition filed less than sixty (60) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election." In addition, the Charter, § 5.05D, which states "Not less than three weeks before any election at which a proposed charter amendment is to be voted on, the election authorities shall publish a notice in a daily newspaper of general circulation." is superseded by T.C.A. § 2-12-111(b) which requires publication of "notice of elections on questions not less than twenty (20) days nor more than thirty (30) days before the day of the election."

#### NOTES:

1. Subsection A – Authority for creating new charters provided for in T.C.A., Title 5, Chapter 1, Part 2.

### **Section 5.06. Method of electing officers.**

Elective officers shall be nominated and elected in the manner provided in the election laws for the nomination and election of state and county officers, except as modified by this charter in regard to the filling of vacancies.

### **Section 5.07. Qualification and oath of elected officers.**

Before entering upon their duties, every officer whose election of [or] appointment is prescribed by this charter shall meet all qualifications provided by this charter and applicable state law and shall take and subscribe to the following oath or affirmation before a person authorized to administer oaths:

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States, the Constitution of the State of Tennessee, and the charter of the County of Shelby, and that I will faithfully discharge the duties of my office to the best of my ability.

Any person refusing to take the oath or affirmation shall forfeit that office immediately.

#### **Section 5.08. Conflict of interest.**

A. No officer or employee of the county, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits of [or] emoluments of any contract, job, work or service for the county. No such officer or employee shall accept any service or item of value, directly or indirectly, from any person, firm or corporation having dealings with the county, upon more favorable terms than those granted to the public generally; nor shall there be received, directly or indirectly, any part of any fee, commission or other compensation paid by or payable to the county, or by any person in connection with any dealings with the county, or by any person in connection with any dealings with or proceedings before any office, officer, department, board, commission or other agency of the county. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for county officers, employees or persons or firms doing business with the county guaranteeing the performance of any contract with the county. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of that person's public work, provided, however, that the head of any department or board or commission of the county may permit an employee to receive [same if] publicly offered and paid for the accomplishment of a particular task.

B. The provisions of this article shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law, this charter or ordinance.

C. Any officer or employee of the county who willfully conceals any such interest or violates any of the provisions of this section shall forfeit his or her office. Any contract made in violation of this article may be declared void by the county mayor or by resolution of the board of county commissioners.

D. The board of county commissioners may enact ordinances to guard against injustices and to supplement the provisions and extend prohibitions against conflicts of interest not inconsistent herewith.

#### **Section 5.09. Bonding of officers or employees.**

The mayor and such other county officers or employees as the board of county commissioners may provide shall give bond in the amount and in the form of surety prescribed by the board of county commissioners. The premiums on such bonds shall be paid by the county.

#### **Section 5.10. Residence of county official, employees and attorney qualifications required.**

A. Any county official who shall voluntarily remove his or her residence outside the

election district from which elected or appointed shall forfeit that office immediately.

B. Any lawyer appointed and employed by the county in a legal capacity, who is suspended or barred from the practice of law in the State of Tennessee, shall forfeit that office immediately.

C. All employees must be residents of Shelby County at the time of appointment and shall continue to reside in Shelby County as a condition of their employment, provided, however, this provision shall not apply to any employee working for Shelby County government on the effective date of this charter or to any class of employees exempted by ordinance based on a legitimate governmental interest.

#### NOTES:

1. Subsection C - Amended pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

### **Section 5.11. Temporary advisory board.**

The board of county commissioners or the mayor may appoint for designated periods one or more temporary advisory boards of citizens of the county who shall, without compensation other than necessary expenses as may be provided in the budget, assist in the consideration of county administration policies and programs. It shall be the duty of each such advisory board to study conditions in its respective field, with particular reference to the policies and programs in Shelby County, and to report its findings and recommendations to the board of county commissioners or the mayor, as appropriate.

### **Section 5.12. Ex officio members--Boards, authorities, commissions.**

No county officer or employee who is compensated for his service by salary shall receive any additional salary for serving as an ex officio member of a county board, commission or agency.

### **Section 5.13. Equal opportunity.**

A. The board of county commissioners and the county mayor shall take all actions necessary to assure the continued implementation of all rules, regulations and guidelines promulgated by the Equal [Employment] Opportunity Commission, the Department of Labor, or other such competent authority that are applicable to insuring fair employment practices. The administrator of the appropriate office of the board of county commissioners designated to carry out this function shall be elected by the board of county commissioners pursuant to section 2.03(D) and (E) and shall be subject to termination by resolution of the board of county commissioners.

B. The duties of this administrator shall include all those established by resolution and shall include, but not be limited to, the following:

- (1) Review and implementation of fair employment practices, as specified by Equal Employment Opportunity Commission guidelines, in all departments of county

government;

- (2) Update and monitor an effective affirmative action program;
- (3) Investigate claims and complaints of discriminatory practices arising in county government departments;
- (4) Design, implement and monitor programs to increase minority business participation in the letting of county contracts;
- (5) Review all proposed contracts in which county funds are expended to insure that nondiscriminatory employment practices are being executed on all levels of employment as specified by Equal Employment Opportunity Commission and Labor Department regulations;
- (6) The administrator shall have the power to require each firm or business contracting with the county to submit with their proposals and/or bid statistics revealing the percentage and number of minorities at all levels of said firm or business; [and]
- (7) Such other duties as may be required by the board of county commissioners.

NOTES:

1. Under Ch. 260, Priv. 1974 ("Restructure Act"), the Department of Equal Opportunity Compliance was created and established as part of the executive branch of Shelby County government. Effective September 1, 1986, Shelby County adopted a charter form of government and an office of the legislative branch became responsible for carrying out the provisions of this section.

2. Under Ch. 260, Priv. 1974 ("Restructure Act"), the board of county commissioners defined standards for determining eligibility of businesses to bid on contracts with the county and authorized the county mayor to establish an appeals process for businesses deemed ineligible by the EOC Office (Res. No. 12, 5-9-83). Effective September 1, 1986, Shelby County adopted a charter form of government and the board of county commissioners designated the EOC Office to carry out the provisions of this section, incorporated the standards adopted by Res. No. 12 (5-9-83) for determining eligibility, and authorized the board's chairman to establish an appeals process for businesses found ineligible (Res. No. 17, 10-20-086).

**Section 5.14. Pension benefits retained.**

Notwithstanding the enactment of this charter, officers and employees who are members or beneficiaries of an existing pension or retirement system, or beneficiaries or prospective beneficiaries of an existing retirement system, or retirement fund, shall continue to have the rights, privileges, obligations and status with respect to the said system or fund as is now or hereafter prescribed by law.

**Section 5.15. Liability and void obligation if contrary to charter.**

A. Except as otherwise provided in this charter, every obligation incurred and every authorization of payment in violation of the provisions of this charter are void. Every payment made in violation of the provisions of this charter is illegal, and all county officials who authorize

or make such payment or any part thereof are jointly and severally liable to the county for the full amount so paid or received. If any county official makes any payment or incurs any obligation or takes part therein in violation of the provisions of this charter, that action shall be cause for his discharge from employment.

B. Nothing contained in this charter is intended to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partially by the issuance of bonds, nor shall it prevent the making when permitted by law of a contract or lease providing for payment of funds at a time beyond the end of the fiscal year in which the contract or lease is made. But any contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by resolution.

#### **Section 5.16. Public meetings and records.**

A. *Open meetings.* In accordance with Tennessee law, all official meetings of boards, commissions and authorities shall be public.

B. *Public records.* In accordance with Tennessee law, all county records shall be public documents and shall be open for inspection.

#### **Section 5.17. Administrative rules and regulations.**

The head of any department, office or agency may, except as otherwise provided by law and subject to the approval of the county mayor, make rules and regulations for the conduct of that department, office or agency and to carry out its powers and duties.

#### **Section 5.18. County seal and flag.**

The board of county commissioners shall have the power to adopt an official seal and flag for the county.

#### **Section 5.19. Service of process on county.**

Service of any legal process, notice, or other matter to be served upon the county pursuant to any rule, regulation or law shall be made upon the county mayor or any other official allowed by law.

#### **Section 5.20. Duty to provide health service and to require payment from those able to pay.**

A. The county may acquire, construct, equip, extend, repair, maintain and manage, or contract for management, and operate, or cause to be operated through contract, hospitals, sanitariums, and clinics owned, supported or controlled by the county. The board of county commissioners may enact ordinances under which patients who are able to do so pay in whole or in part for their care and treatment.

B. The county may act through an authority established by county government to accomplish or carry out any or all of the above outlined duties.

### **Section 5.21. Severability.**

If any article, section or provision of this charter shall be held unconstitutional, invalid or inapplicable to any persons or circumstances, then it is intended and declared by the people of the county that all other articles, sections or provisions of this charter and their application to all other persons and circumstances shall be severable and shall not be affected by any such decision.

### **Section 5.22. Holding more than one compensated elective office.**

A. No elected county official shall be eligible to hold any other local, county, state or federal compensated elective office, except for offices of a temporary nature. If an elected county official assumes another compensated elective office, the official shall vacate the county office within ninety (90) days. Provided, however, anyone who currently holds another compensated elective office may run for a county elective office so long as, if elected, that person resigns the existing elective office within ninety (90) days of election as a county official.

B. If a vacancy exists in the office of an elected county official pursuant to this section, the board of county commissioners shall elect an interim who shall serve until a successor is elected and qualified at the next countywide election allowed by the state election laws.

#### **NOTES:**

1. Added pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

### **Section 5.23. Succession of authority and continuity of government in a disaster.**

A. As used in this section, except as otherwise specifically indicated, “disaster” shall be defined by the meaning of “disaster” and “emergency” as set forth in Tennessee Code Annotated § 58-2-101, which shall include, but not be limited to, enemy attack, sabotage, hazardous material incident, extraordinary fire, flood, storm, pandemic, epidemic or earthquake.

B. In the event of a disaster, notwithstanding Article III, Section 3.05 to the contrary, if the county mayor is temporarily unavailable or unable to perform the duties of office for any reason, the powers and duties of the office of county mayor shall be temporarily exercised and discharged in the following order based on the availability of the county official to serve as acting county mayor until the county mayor becomes available or a vacancy is declared and filled pursuant to Article III, Section 3.05 herein:

- (1) Chairman of the board of county commissioners.
- (2) Chairman pro tempore of the board of county commissioners.
- (3) Member of the board of county commissioners with the most consecutive years of service on the county commission. In the event more than one county commissioner has the same number of years of consecutive service, then:
  - (a) If a majority of the membership of the board of county commissioners is available, the county commissioners shall elect, by a majority vote, a chairman for the board of county commissioners to serve as acting county



mayor; or

- (b) If a majority of the membership of the board of county commissioners is unavailable, the county commissioner elected to the lowest district number, then lowest position number shall serve as acting county mayor.

- (4) Chief administrative officer of the county mayor's administration.

C. In the event of a disaster, if the chairman and/or chairman pro tempore of the board of county commissioners is temporarily unavailable or unable to perform the duties of office for any reason, the remaining county commissioners shall elect by a majority vote an interim chairman and/or chairman pro tempore to serve the remainder of the annual term for such officer or until the chairman and/or chairman pro tempore becomes available for duty.

D. In the event of a disaster, notwithstanding Article II, Section 2.05 herein, if a majority of the membership of the board of county commissioners is temporarily unavailable or unable to perform the duties of office for any reason, the powers and duties of the board of county commissioners shall be temporarily exercised and discharged in the following order for a period of twenty-one (21) days, unless a majority of the county commissioners becomes available for duty:

- (1) If less than a majority of county commissioners are available for duty, they shall have full authority to act in all legislative matters. Prior to the end of the twenty-one (21) calendar day period, the county commissioners shall by majority vote appoint interim county commissioners to serve until the county commissioners become available for duty or vacancies are declared and filled pursuant to Article II, Section 2.11 herein.
- (2) If no county commissioners are available for duty, the county mayor or acting county mayor shall appoint one interim county commissioner from each county commission district to serve until the county commissioners become available for duty or vacancies are declared and filled pursuant to Article II, Section 2.11 herein.

E. All meetings of the board of county commissioners during a disaster shall be public and minutes of said meetings shall be taken and transcribed as the official records of the board of county commissioners.

F. Within one year from the date this section becomes effective, the board of county commissioners shall adopt an ordinance establishing policies and procedures for maintaining the continuity of government in the event of a disaster which shall include, but not be limited to, emergency powers; emergency procurement; records preservation; temporary relocation of the seat of county government; relocation of, and delivery of services to, citizens of Shelby County directly impacted by the disaster; and any other provisions necessary to ensure continuity of government and delivery of essential services to the citizens of Shelby County.

#### NOTES:

- 1. Added pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

#### **Section 5.24. Recall of elected county officials.**

A. The county mayor, members of the board of county commissioners, and all county charter officers elected pursuant to this charter may be removed from office by the recall method provided for in Title 2 of the state election laws and in accordance with this section, but in no event shall such county officials be subject to recall during the first one hundred eighty (180) days or the last one hundred eighty (180) days of the term for which such county officials were elected.

B. Voters of the county may circulate a petition to recall the county mayor, members of the board of county commissioners, and all county charter officers elected pursuant to this charter. Any petition to recall under this section shall be signed by at least fifteen percent (15%) of the registered voters eligible to vote for the office that is the subject of the petition to recall.

C. If a majority of the voters vote “no,” the incumbent county official shall remain in office. If a majority of the voters vote “yes,” the incumbent county official shall be deemed recalled and removed from office. In cases where the incumbent county official is recalled from office, the board of county commissioners shall appoint an interim county official who shall serve until a successor is elected and qualified at the next countywide election allowed by the state election laws.”

#### **NOTES:**

1. Added pursuant to voter referendum of 8-7-08, effective 9-1-08 (Ord. No. 361, 6-2-08).

#### **Section 5.25. Term limitations for county charter officers.**

A. County charter officers elected pursuant to Article VIII herein shall not be eligible to hold, or be elected to, the same county charter office for more than two consecutive four-year terms.

B. If an individual is elected or appointed to fill an unfilled term, that term shall not be counted as part of the term limitations set forth herein for county charter officers.

#### **NOTES:**

1. Added pursuant to voter referendum of 11-4-08 (Ord. No. 365, 8-27-08).

**Editor’s note:** The adopted amendment to the Shelby County Charter [as passed at referendum of November 4, 2008] shall take effect on September 1, 2010 as it applies to the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, and Shelby County Clerk; but shall become effective on September 1, 2012, as it applies to the Shelby County Assessor; so as not to have the effect of removing the incumbent constitutional county officers from office, or abridging the term or altering the salary prior to the end of the term for which such incumbent constitutional officers were elected.